

84TH CONGRESS
2D SESSION

H. R. 8534

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 1956

Mr. CURTIS of Massachusetts introduced the following bill; which was referred
to the Committee on the Judiciary

A BILL

To authorize the extension of patents covering inventions whose practice was prevented or curtailed during certain emergency periods by service of the patent owner in the Armed Forces, or whose owners granted royalty-free licenses in aid of war or national defense efforts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) if at any time during any of the periods specified
4 in subsection (d) of this section—

5 (1) the term of any patent of the United States
6 including time during which any individual or indi-
7 viduals, owning solely or jointly with his spouse or their
8 spouses the entire interest in such patent, was or were

1 performing honorable service on active duty in the
2 Army, Navy, Air Force, Marine Corps, or Coast Guard,
3 which service prevented or substantially curtailed the
4 normal use, exploitation, promotion, or development of
5 the patent; or

6 (2) to further the interest of the United States of
7 America, the owner of such patent has heretofore
8 granted a license thereunder to the United States, or to
9 manufacturers, producers, or contractors authorizing
10 them to produce or furnish goods or services for or to
11 the United States, without payment of royalty, or at a
12 nominal royalty, such license having been granted by
13 such owner to promote any war effort, or any program
14 or rearmament or preparation for the national defense,
15 in which the United States has been engaged since the
16 invasion of Poland by Germany on September 1, 1939;
17 and since September 1, 1939, under the authority of
18 such license, the United States, or manufacturers, pro-
19 ducers, or contractors furnishing goods or services to the
20 United States, have made substantial use of the inven-
21 tion embodied in such patent in the production or fur-
22 nishing of goods or services for or to the United States,
23 such use of said invention having been of material
24 assistance and benefit to the United States in connection
25 with any war effort, or any program of rearmament or

1 preparation for the national defense, which granting of
2 a license prevented or substantially curtailed the normal
3 use, exploitation, promotion, or development of the
4 patent;

5 then the term of such patent may be extended in accordance
6 with the provisions of this Act.

7 (b) The period of extension of a patent under this Act
8 shall be a further term from the expiration of the original
9 term as follows:

10 (1) In cases where the only grounds for extension are
11 those described in subsection (a) (1) of this section, the
12 further term shall equal twice the length of the active serv-
13 ice during the applicable period or periods specified in sub-
14 section (d).

15 (2) In cases where the only grounds for extension are
16 those described in subsection (a) (2), the further term
17 shall equal the period during which the initial license granted
18 by the owner of such patent, without payment of royalty,
19 or at a nominal royalty, was in effect between September
20 2, 1945, and April 29, 1952, for licenses granted during
21 the national emergency of 1939 (proclamation numbered
22 2352) or between July 26, 1953, and the effective date of
23 this Act for licenses granted during the national emergency
24 of 1950 (proclamation numbered 2914). In no event shall
25 the period of extension hereunder be greater than the period

1 during which the normal use, exploitation, or development
2 of the patent was prevented or substantially curtailed.

3 (3) In cases where grounds for extension exist under
4 more than one paragraph of subsection (a), the further
5 terms designated in this subsection (b) shall not be cumu-
6 lative but shall be determined under the applicable para-
7 graph of this subsection (b) which results in the longest
8 extension.

9 (c) If the ownership of the patent at the time the cir-
10 cumstances, described in subsection (a), which qualify the
11 patent for extension, first arose, is different from the owner-
12 ship at the time of the filing of the application for extension
13 under this Act, such application shall be acted upon only
14 if the owner or owners at the time such circumstances first
15 arose (or their legal representatives) have joined in such
16 application.

17 (d) The periods during which one or more of the cir-
18 cumstances described in subsection (a) (1) must have
19 occurred in order to qualify a patent for extension under this
20 Act are as follows:

21 (1) The period beginning December 7, 1941, and end-
22 ing September 2, 1945.

23 (2) The period beginning June 26, 1950, and ending
24 July 26, 1953.

25 (e) For the purposes of this section, a reissue patent

1 shall be considered to be the same patent as that which it
2 supersedes.

3 SEC. 2. (a) On the filing of an application for extension
4 of the term of a patent hereunder, together with such infor-
5 mation as may be required by the Commissioner, and upon
6 payment of such initial fees as the Commissioner may from
7 time to time prescribe, the Commissioner shall publish a
8 notice thereof in the Official Gazette of the Patent Office.
9 Within sixty days from such publication any person may
10 oppose an application for extension by filing with the Com-
11 missioner a notice of opposition thereto stating the grounds
12 therefor, which shall not include any charge that the patent
13 is invalid. If a proper notice of opposition is filed and
14 payment is made by the opponent of such initial fees as the
15 Commissioner may from time to time prescribe, the Com-
16 missioner shall set a day for hearing and shall give not less
17 than thirty days' notice of such hearing to the parties in
18 interest. Upon the hearing the parties in interest shall pre-
19 sent such evidence as they believe is relevant and such other
20 pertinent evidence as may be required by the Commis-
21 sioner. If, from all the evidence presented before him, the
22 Commissioner is satisfied that a patent should be extended
23 in accordance with this Act, he shall grant such extension.
24 The Commissioner shall fix the total fees (not exceeding

1 \$150) to be paid by each applicant for extension of the term
2 of a patent hereunder and the total fees (not exceeding \$50)
3 to be paid by each opponent to an application, the specific
4 amount of all such fees to be determined according to the
5 work of the Patent Office required in processing the appli-
6 cation or in hearing an opponent thereto, as the case may
7 be, and the estimated cost thereof to the Patent Office.

8 (b) The Commissioner may establish rules and regu-
9 lations for the conduct of proceedings under this Act.

10 SEC. 3. Any application for the extension of the term of
11 a patent hereunder shall be filed within one year from the
12 effective date of this Act except for applications which are
13 filed under subsection (a) (1) of section 1, which appli-
14 cations shall be filed within one year from the effective date
15 of this Act or within one year from the date of the appli-
16 cant's honorable discharge from service.

17 SEC. 4. The Commissioner shall issue a certificate evi-
18 dencing the granting of an extension hereunder. A notice
19 of the granting of an extension shall appear in the Official
20 Gazette of the Patent Office.

21 SEC. 5. Upon the issuance of the certificate of extension,
22 said patent shall have the same force and effect in law as
23 though it had been originally granted for seventeen years
24 plus the term of such extension, except as otherwise pro-
25 vided herein.

1 SEC. 6. Except where the owner of a patent extended
2 hereunder was entitled to royalties under said patent
3 (whether or not such royalties were received or waived)
4 for any class of machines, articles or materials, or for the
5 use of any class of processes or formulas, produced or fur-
6 nished exclusively to or for the benefit of the United States,
7 or used exclusively by or for the benefit of the United States,
8 no patent extended under the provisions of this Act shall
9 serve as a basis for any claim by reason of manufacture, use
10 or sale by or for the United States during the period of ex-
11 tension, and the rights of the United States shall remain in
12 all respects as if such patent had not been extended.

13 SEC. 7. In the event that an extension is not issued
14 until after the date of expiration of the original term of a
15 patent or reissue thereof, the extension order shall provide
16 that any vested rights arising out of the actual manufacture,
17 use, or sale of the invention covered by the patent so ex-
18 tended, which took place after the said expiration and before
19 the issuance of the extension order may continue during the
20 remainder, if any, of the period of the extension upon such
21 terms and conditions as the Commissioner may prescribe,
22 including the payment of reasonable royalties, providing the
23 person or persons claiming such vested rights establish such
24 rights to the satisfaction of the Commissioner upon a hearing.

25 SEC. 8. In any action for infringement after the expira-

1 tion of seventeen years from the grant of the patent and dur-
2 ing the period of such extension, the defendant may plead
3 and prove that any material statement of the application
4 for extension required by this Act is not true in fact; and if
5 any one or more of such statements shall be found untrue in
6 fact, judgment shall be rendered for the defendant, with costs.

7 SEC. 9. If any party in interest for an extension is dis-
8 satisfied with the decision of the Commissioner or of any
9 board established by the Commissioner for the determination
10 of applications for extension, he shall have an appeal to the
11 United States Court of Customs and Patent Appeals, or
12 suit in the District Court for the District of Columbia, as pro-
13 vided in the case of applications for patent.

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